

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 14-5041

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

JIMMIE DUANE ROSS,

Defendant-Appellant.

**FILED**

Jun 05, 2015

DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF  
TENNESSEE

O R D E R

Before: COLE, Chief Judge; GILMAN and SUTTON, Circuit Judges.

Jimmie Duane Ross, a federal prisoner proceeding through counsel, appeals his conviction on five counts of tax evasion and the resulting sentence of fifty-one months of imprisonment. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In April 2011, a federal grand jury returned an indictment charging Ross with five counts of tax evasion, in violation of 26 U.S.C. § 7201. In 2000, the Internal Revenue Service (IRS) audited Ross's 1998 tax return and determined that he owed over \$230,000 in back taxes. Ross advised the IRS agent conducting the audit that he did not intend to pay the tax liability, and he unsuccessfully appealed the determination. He did not file a petition in the Tax Court. Instead, Ross sent letters to the IRS and other state and federal officials claiming that he was no longer a citizen of the United States and was not subject to federal income taxes. Ross never paid the taxes owed and eventually stopped filing tax returns altogether, with the exception of a Form

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1040NR (U.S. Nonresident Alien Income Tax Return)—a form intended for use by only non-citizens—that he filed in 2008 reporting no income.

In 2004, the IRS assigned a revenue agent to collect the debt owed by Ross. This agent sent Ross a letter notifying him that she intended to pursue enforcement collections and that he owed \$404,484.62. The IRS discovered that, during the time of its collection efforts, Ross created a corporation through which he filed “friendly liens” against his house and his car, which prevented the IRS from seizing the assets due to insufficient equity. Also during this time, Ross recruited clients for Guardian Trust, Ltd., an offshore trust company based in Nevis, West Indies, specializing in asset protection and offshore investments. In an effort to evade payment of taxes on the income—income that Ross knew Guardian Trust did not report to the IRS—Ross set up a nominee corporation registered in Nevis, Global Matrix, LLC, to receive the commissions and fees he earned. He then transferred the funds to bank accounts in the United States.

Ross proceeded to trial on the charges in August 2013 and was convicted on all five counts. The district court sentenced Ross at the low end of the fifty-one to sixty months guidelines range to concurrent terms of imprisonment of fifty-one months for each count of conviction, followed by three years of supervised release, and ordered restitution in the amount of \$532,389.

Ross now appeals, raising the following arguments: (1) the trial court erred in admitting into evidence letters from officials of the Church of Jesus Christ of Latter-day Saints to Ross concerning the church’s position on Ross’s obligation to pay taxes; and (2) the sentence imposed is excessive and unreasonable.

**I. Admission of Church Letters**

“[We] review[] a district court’s admission of evidence and its relevance determinations for an abuse of discretion.” *United States v. Hanna*, 661 F.3d 271, 288 (6th Cir. 2011). “In reviewing the trial court’s decision for an abuse of discretion, [we] must view the evidence in the light most favorable to its proponent, giving the evidence its maximum reasonable probative force and its minimum prejudicial value.” *United States v. Copeland*, 321 F.3d 582, 597 (6th Cir. 2003) (internal quotation marks omitted). Even when the district court abuses its discretion

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in admitting evidence, reversal is warranted only if the error is not harmless. *See United States v. Childs*, 539 F.3d 552, 559 (6th Cir. 2008). Evidence is relevant if it tends to make a fact of consequence to determining the action more or less probable than it would be without the evidence. Fed. R. Evid. 401. A court may exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice. Fed. R. Evid. 403.

During a search of Ross's residence, IRS agents found four letters from officials of the Church of Jesus Christ of Latter-day Saints, one addressed to the "Brothers and Sisters" of the Knoxville Tennessee Stake and the other three addressed to Ross. Two of the letters addressed to Ross responded to his inquiry about being denied a "temple recommend" and the third advised Ross that a disciplinary council had decided to "disfellowship" Ross for three months due to his having provided advice on illegal tax avoidance to others. All four letters expressed the church's position on the payment of taxes: "Members who refuse to file a tax return, pay required income taxes, or comply with final judgment in a tax case are in direct conflict with the law and with the teachings of the Church."

Prior to trial, Ross filed a motion in limine seeking to exclude the letters, arguing that the evidence was irrelevant because church officials have no authority to interpret tax law. He also argued that such evidence would be unduly prejudicial, misleading, and unnecessarily cumulative. The district court denied the motion, explaining that, "[i]f the defendant raises a good faith defense, the church communications become relevant and are not needlessly cumulative" and that any potential prejudice would not substantially outweigh the relevance of the evidence.

The government argues that Ross has waived his right to challenge the evidence on appeal because he stipulated to the admission of the letters. However, it appears that Ross stipulated only as to the authenticity of the documents. Although the government argues that Ross needed to renew his objection at trial in order to preserve the issue for appeal because the district court's ruling on the motion in limine was conditional, renewal was not necessary because the district court's ruling made clear that Ross could renew his objection only if he decided not to contest the issue of willfulness or pursue a good-faith defense. *See United States*

*v. Brawner*, 173 F.3d 966, 970 (6th Cir. 1999). Thus, the issue of the letters' admissibility is properly before us.

The district court did not abuse its discretion in admitting the letters into evidence. To prove tax evasion, the government must prove three elements: "willfulness; the existence of a tax deficiency; and an affirmative act constituting evasion or attempted evasion of the tax." *United States v. Heath*, 525 F.3d 451, 456 (6th Cir. 2008) (citation and internal quotation marks omitted). "Willfulness . . . requires the [g]overnment to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." *Cheek v. United States*, 498 U.S. 192, 201 (1991).

Ross contends that the letters had little probative value because they expressed the lay opinion of church officials. But to prove willfulness, the government can submit to the jury "any admissible evidence from any source showing that [the defendant] was aware of his duty." *Id.* at 202. Here, each of the four letters expressly stated that failure to pay federal income taxes violated not only the teachings of the church, but also the law. Because Ross placed willfulness at issue by raising a good-faith defense, the letters are relevant as they tend to prove that Ross knew of his legal obligation to pay taxes.

Ross has also failed to show that any prejudicial value of the letters substantially outweighed their probative value such that the district court's admission of the evidence amounted to an abuse of discretion. His assertion that the letters were misleading because they focus on Ross's failure to comply with the directives of church officials rather than the law is unsupported. The fact that the letters show that Ross not only knew of his legal obligation to pay taxes but also violated the church's directives does not render them unfairly prejudicial. Moreover, Ross's argument that the letters were unnecessarily cumulative of other evidence of his knowledge does not warrant reversal. *See In re Air Crash Disaster*, 86 F.3d 498, 535 (6th Cir. 1996).

Finally, Ross's challenge to the admission of the evidence on the ground that it violated his rights under the Confrontation Clause fails. Plain-error review applies to this claim because Ross did not object to the evidence on Confrontation Clause grounds in the district court. *See*

*United States v. Ford*, 761 F.3d 641, 652–53 (6th Cir.), *cert. denied*, 135 S. Ct. 771 (2014). “To establish plain error, a defendant must show (1) that there was an error—‘some sort of deviation from a legal rule’; (2) that the error was ‘obvious, rather than subject to reasonable dispute’; and (3) that the error affected the defendant’s ‘substantial rights.’” *United States v. Martinez*, 588 F.3d 301, 313 (6th Cir. 2009) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

The Confrontation Clause prohibits the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). “To trigger a violation of the Confrontation Clause, an admitted statement must be testimonial in nature, and must be hearsay—that is, a ‘statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’” *United States v. Deitz*, 577 F.3d 672, 683 (6th Cir. 2009) (quoting *United States v. Gibbs*, 506 F.3d 479, 486 (6th Cir. 2007)). Here, the letters were not offered for the truth of the matter asserted; rather, they were introduced by the government in order to show Ross’s knowledge of his legal duty to pay taxes. Nor were they testimonial in nature. See *United States v. Johnson*, 581 F.3d 320, 325 (6th Cir. 2009). Thus, admission of the letters did not violate Ross’s right of confrontation.

## **II. Reasonableness of the Sentence**

Ross next argues that his sentence is procedurally unreasonable because the court failed to consider the arguments he raised for a below-guidelines sentence—his age, exemplary military service, medical conditions, and conditions of confinement—and failed to provide reasons for rejecting his arguments. Ross also argues that the sentence is substantively unreasonable.

We review a district court’s sentencing decision for procedural and substantive reasonableness under the abuse-of-discretion standard. *United States v. Cunningham*, 669 F.3d 723, 728 (6th Cir. 2012). However, because Ross did not claim any procedural error at the sentencing hearing, to the extent he now claims that his sentence is procedurally unreasonable,

we review the issue for plain error. *See United States v. Wallace*, 597 F.3d 794, 802 (6th Cir. 2010).

A sentence may be procedurally unreasonable if the sentencing court “commit[s] [a] significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.” *Gall v. United States*, 552 U.S. 38, 51 (2007). “The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decisionmaking authority.” *Rita v. United States*, 551 U.S. 338, 356 (2007).

Before imposing its sentence, the district court stated, *inter alia*, that it had “looked at the history and characteristics of the defendant,” noting that it had reviewed the “beautifully written” letters submitted by Ross’s family. The court further stated, “We have considered the fact that [Ross] has lived otherwise a highly respectful life and has been very successful. We recognize he has no prior criminal history.” The court, however, balanced those factors against the seriousness of the offense and the need to deter Ross and others. Although Ross argues otherwise, the court was not required to specifically mention the arguments Ross raised for a lower sentence, *i.e.*, his age, military service, medical conditions, or conditions of confinement. *See United States v. Jeter*, 721 F.3d 746, 756 (6th Cir.), *cert. denied*, 134 S. Ct. 655 (2013). It is enough that the court made clear that it had considered Ross’s personal history and characteristics.

Ross also argues that his sentence is excessive. A sentence may be found substantively unreasonable if the district court “selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.” *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008). Sentences that fall within the applicable guidelines range are afforded a presumption of reasonableness. *See United States v. Baker*, 559 F.3d 443, 448 (6th Cir. 2009).

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Ross has failed to rebut the presumption that his within-guidelines sentence is substantively reasonable. Review of the sentencing transcript reveals that the district court considered all of the § 3553(a) factors and weighed them against each other in arriving at what it deemed an appropriate sentence. The court did not select the sentence arbitrarily or give an unreasonable amount of weight to any factor. Ross has pointed to nothing in the record to show that the district court abused its discretion in fashioning a sentence.

Accordingly, we affirm the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk